

**Corrected**

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1700V

UNPUBLISHED

CHRISTINE MURSCHEL,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: August 12, 2021

Special Processing Unit (SPU); Joint  
Stipulation on Damages; Influenza  
(Flu); Shoulder Injury Related to  
Vaccine Administration (SIRVA).

*David John Carney, Green & Schafle LLC, Philadelphia, PA, for Petitioner.*

*Lynn Christina Schlie, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION ON PROFFER**<sup>1</sup>

On November 1, 2019, Christine Murschel filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine administered on November 1, 2016. Petition at 1; Proffer filed August 11, 2021 (ECF No. 48) at Preamble.

On May 18, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. ECF No. 42. On August 12, 2021, the parties filed the attached proffer, which states that a decision should be entered awarding compensation. I find the proffer reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Pursuant to the terms stated in the attached Proffer, I **award** the following compensation:

- **A lump sum payment of \$125,000.00 in the form of a check payable to Petitioner.** Proffer at 3.
- **A lump sum payment in the amount of \$8,750.46, representing compensation for satisfaction of the State of Minnesota Medicaid lien, in the form of a check payable jointly to Petitioner and:**

HealthPartners  
PO Box 1309  
Mail Stop 21114a  
Minneapolis, MN 55440-1309

**Petitioner agrees to endorse the check to HealthPartners for satisfaction of the Medicaid lien.** Proffer at 3.

The above amounts represent compensation for all items of damages that would be available under Section 15(a). *Id.*

I approve the requested amounts for Petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

On May 12, 2021, respondent filed a Vaccine Rule 4(c) report concluding that petitioner suffered an injury that is compensable under the National Childhood Vaccine Injury Act of 1986, as amended, 42 U.S.C. §§ 300aa-10 to -34, that is, a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table. ECF No. 41. Accordingly, on May 18, 2021, the Chief Special Master issued a Ruling on Entitlement. ECF No. 42.

### A. Pain and Suffering

Based upon the evidence of record, respondent proffers that petitioner should be awarded a lump sum of **\$125,000.00** for pain and suffering, in the form of a check payable to petitioner. Petitioner agrees.

## B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of Minnesota Medicaid lien in the amount of **\$8,750.46**, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Minnesota may have against any individual as a result of any Medicaid payments the State of Minnesota has made to

or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about November 1, 2016, under Title XIX of the Social Security Act.

The above amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

## **II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through two lump sum payments described below, and request that the Chief Special Master's decision and the Court's judgment award the following:<sup>1</sup>

- A. A lump sum payment of **\$125,000.00** in the form of a check payable to petitioner;  
and
- B. A lump sum payment of **\$8,750.46**, representing compensation for satisfaction of the State of Minnesota Medicaid lien, in the form of a check payable jointly to petitioner and:

HealthPartners  
PO Box 1309  
Mail Stop 21114a  
Minneapolis, MN 55440-1309

Petitioner agrees to endorse the check to HealthPartners for satisfaction of the Medicaid lien.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

C. SALVATORE D'ALESSIO  
Acting Director  
Torts Branch, Civil Division

HEATHER L. PEARLMAN  
Deputy Director  
Torts Branch, Civil Division

TRACI R. PATTON  
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/s/ Lynn C. Schlie  
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DATED: August 11, 2021